

# **EXHIBIT K**

**DECLARATION**

I, David Navarrette, do hereby swear, affirm and attest under the penalties of perjury as follows, based upon my personal knowledge of the matters contained herein:

1. I am over the age of 18 and competent to testify to the matters stated in this declaration. I give this declaration voluntarily. I have not been promised any benefit, coerced or threatened in any manner in exchange for the testimony in this declaration.

2. I am employed at The 40/40 Club, located at 6 West 25<sup>th</sup> Street, New York, New York, as a Server. I have held this position for approximately three year.

3. I do not consider Shawn Carter to be my employer. I have never witnessed him exercise control over any personnel decisions at The 40/40 Club. To my knowledge, Mr. Carter does not interview employees, does not hire employees, does not set policies for the payment of wages, pay rates or the method of payment, and does not sign employees' paychecks. I have never witnessed Mr. Carter supervise or discipline employees, investigate complaints, or set employment policies or procedures.

4. I also do not consider Juan Perez to be my employer. I have never witnessed him exercise control over any personnel decisions at The 40/40 Club. To my knowledge, Mr. Perez does not interview employees, does not hire employees, does not set policies for the payment of wages, pay rates or the method of payment, and does not sign employees' paychecks. I have never witnessed Mr. Perez supervise or discipline employees, investigate complaints, or set employment policies or procedures.

5. At all times throughout my employment, I have been required to clock in and clock out to provide The 40/40 Club with an accurate record of my time worked. When we arrive for work at the Club, servers log into the computer. We log out of the computer after our final sale is complete.

6. I regularly work eight hours per workday.

7. I have no knowledge of The 40/40 Club deducting from my wages or the wages of any other employee the amount of a bill because a customer walked out without paying.

8. The 40/40 Club has never deducted an amount from my wages due to breakage, spills, returns, wrong orders or anything similar. I have broken items, but have never been charged. I have no knowledge of any such deductions being made from any other employee's wages.

9. I believe The 40/40 has paid me all wages to which I am entitled. I do not believe that I have been denied any minimum, overtime or other wages.

10. The 40/40 Club has never retained any portion of my tips.

11. The 40/40 Club does not serve customers after 4:00 A.M. I am not aware of any server ever working until 6:00 a.m.

12. Unlike other restaurants, servers at the 40/40 Club have only minimal side work to do following the conclusion of their shift. On most nights, servers generally leave within forty-five minutes, at the most, after the service ends.

13. Servers at the 40/40 Club maintain the amounts paid by customers, including tips we receive, until the end of the night. A 20% tip is automatically added to each bill by the computer. At the end of the night, our checks are added up and we pay the Club the amount of the bill less the tips. On the rare occasions where the amount of cash we receive does not cover

our credit card tips, we are paid the balance by the Club on the spot. Therefore, the Club never takes possession of our tips. The 40/40 Club does not have a tip pooling arrangement, but we do give a percentage of our tips to the bussers, runners and bartenders who help us serve our tables.

14. This declaration was prepared by counsel for Twenty Ones, Inc. d/b/a The 40/40 Club based on an interview in which I voluntarily participated. I was advised that I could end the interview at any time. I have also been told by counsel for Twenty Ones Inc. that I should only sign this declaration if everything within it is true and correct to the best of my knowledge, information and belief. I have been given a full opportunity to review carefully this declaration I have been given a full opportunity to review carefully this declaration and freely make any corrections and additions of any kind. I verify that the information I have provided in this declaration is true and correct.

Pursuant to 28 U.S.C. § 1746, I verify under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct.



David Navarrette

8/20/07  
Date